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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,706	06/19/2001	Patrick W. Breslin	57111-5061	4055

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EXAMINER

MELWANI, DINESH

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/884,706

Applicant(s) *SW*

BRESLIN ET AL.

Examiner

Dinesh N Melwani

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/23/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Acknowledgment is made of Applicant's submission of:

Amendment B filed on 9/23/03

The aforementioned item has been noted and officially inserted into the application.

#### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-<sup>4</sup>~~8~~, 8, 9, 12, 13, 14, 18, 20, 23, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Kochte *et al.* (U.S. Patent No. 5,391,360). Kochte discloses a latching system as claimed; wherein said system includes a base (A), a closable member (B), see abstract, an elongated member rotatably (40) secured to said closable member, said elongated member including a first connector (54), and a rotator clevis (V, see attached Fig. 6) secured to the elongated member; and a latch plate assembly hingedly secured to said closable member, wherein said latch plate assembly includes a handle (30) and a latch lever (L, see attached Fig. 6) integrally formed and extending from said handle, said latch lever in mechanical communication with said rotator clevis; wherein said handle causes said elongated member to rotate, see col. 4, lines 40-65. As it concerns claim 2, Kochte's elongated member also includes a second connector (Fig. 6) adapted to engage a portion of said base, and wherein said first and second

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connectors are secured at opposite ends of said elongated member. As it concerns claim 3, Kochte's latch plate assembly includes a base plate; and wherein said handle (30) is hingedly secured to said base plate. In regards to claim 4, Kochte's handle is hinged relative to said base plate said latch lever causes said elongated member to rotate, see Fig. 4 and the Abstract. In regards to claim 5, Kochte's rotator clevis includes a tube (i.e., thru which member G in attached Fig. 6 passes), wherein said tube has at least one for extending therefrom, see Fig. 6. As it concerns claim 6, latch lever (L) includes an engagement member having at least one opposed knob (G in attached Fig. 6) extending therefrom, wherein said at least one opposed knob engages said at least one fork of said rotator clevis. Regarding claim 8, Kochte's handle is hingedly secured to said base plate by a pivot pin, see (C) in Fig. 6. As it concerns claim 9, Kochte's latch plate assembly further includes a spring (70). In regards to claim 12, Kochte's elongated member comprises an elongated shaft (40) and said first connector comprises a hook, see Fig. 6. As it concerns claim 13, Kochte's base has a first keeper (58) secured thereto, and wherein said first hook is adapted to engage said keeper when said closable member engages said base. In regards to claim 14, Kochte's base has first and second keepers secured thereto, and wherein said first and second connectors are adapted to engage said keeper when said closable member engages said base. As it concerns claim 18, Kochte's closable member is adapted to engage the base, and said connector is adapted to engage a portion of said base (i.e. 58) when said closable member engages said base and said elongated member is rotated. In regards to claim 20, Kochte's first hook comprises a tube (52) having a hook member extending therefrom, wherein said elongated shaft (40) is received in said tube and said first hook is secured to said elongated shaft, see Fig. 6. As it concerns claim 23, Kochte discloses a latch system as claimed; wherein

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said system includes a shaft assembly secured to said first object, said shaft assembly including an elongated member (40) having at least one connector (54) secured thereto, a hinged latch plate assembly secured to said shaft assembly, said hinged latch plate assembly including a handle (30), and at least one keeper (58) secured to said second object, wherein hinged movement of said handle causes rotational movement of said elongated member and cooperation between said at least one connector and said at least one keeper. In regards to claim 24, Kochte's shaft assembly also includes a shield portion (E) for rotationally securing said elongated member therein and for securing said shaft assembly to said first object.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15, 16, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kochte *et al.* (U.S. Patent No. 5,391,360). Kochte does not positively disclose the handle of his invention being made of aluminum, however, the applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate Kochte's handle from aluminum to take advantage of the weight and strength characteristics associated with aluminum. In regards to claim 16, the method of forming the

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device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Kochte does not positively disclose the first hook of his invention being made of stainless steel, however, the applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate Kochte's handle from stainless steel to take advantage of the weight, strength, and corrosive characteristics associated with stainless steel. In regards to claim 22, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kochte *et al.* (U.S. Patent No. 5,391,360) in view of Jacobsen (U.S. Patent No. 4,644,651). Kochte discloses a latch assembly substantially as claimed; wherein said assembly includes a rotator clevis. However, Kochte's rotator clevis does not include a tube having at least one fork extending therefrom but Kochte does contemplate other means may be provided for the transfer of motion, see col. 4, lines 49-52. Jacobsen discloses a rotator clevis (generally R in Fig. 2), wherein said rotator clevis includes a tube having at least one fork extending therefrom. As it concerns claim 6, Kochte, as modified by Jacobsen, discloses a latch lever (28) including an engagement member having at least one opposed knob extending therefrom, wherein said at least one opposed knob engages said at least one fork of said rotator clevis. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize the

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teachings of Jacobsen, in regards to a rotator clevis having a fork, to modify Kochte's motion transfer assembly to reduce the number of working parts.

6. Claims 7, 10, 11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kochte *et al.* (U.S. Patent No. 5,391,360) in view of Weinerman *et al.* (U.S. Patent No. 5,439,260). Kochte discloses a latch system substantially as claimed, but does not include a beak member hingedly secured thereto, and wherein said handle has an elongated opening defined therein, said elongated opening being adapted to receive said beak member. Weinerman discloses a handle assembly that teaches the use of a beak member (240) hingedly secured thereto, and wherein said handle has an elongated opening defined therein, said elongated opening being adapted to receive said beak member, see Fig. 13. As it concerns claim 10, Kochte, as modified by Weinerman, discloses a handle assembly having a beak striker plate (341) secured thereto and at least partially disposed in said elongated opening, see Fig. 12. As it concerns claim 11, said beak striker plate (341) defines a cam surface, wherein said cam surface is adapted for sliding contact with said beak member, see Figs. 8 and 11. In regards to claim 17, Weinerman's beak member (240) is constructed as a fuselink, whereby said beak member is easily broken without damaging the remainder of the latching system. Furthermore, the applicant is reminded that the functional "whereby" statement does not define any structure and accordingly cannot serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Weinerman, in regards to the use of a handle assembly have a beak striker plate, elongated opening to house said beak striker plate, and the ability to be broken off without damaging the entire latch assembly, to modify Kochte's

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assembly to replace handle assembly (30) such that Kochte's latch assembly is afforded increased protection through a protected handle, wherein said handle is protected from accidental actuation, and furthermore, said handle is easily broken in the event of over rotation to protect the latch assembly from excessive stress.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kochte *et al.* (U.S. Patent No. 5,391,360) in view of Tyler (U.S. Patent No. 3,585,742). Kochte discloses a latch assembly substantially as claimed; wherein said latch assembly includes a handle having a handhold end and a hinged end, however, Kochte's handle does not include serrations defined on the handhold end. Tyler discloses a handle assembly having a handhold end, wherein said handhold end includes serrations (16). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize the teachings of Tyler, in regards to serrations on the grip of a handle, to increase the gripping friction on Kochte's handle.

### ***Response to Arguments***

8. Applicant's arguments filed 9/23/03 have been fully considered but they are not persuasive.

9. The Applicant contends that the Kochte reference fails to disclose a rotator clevis and a latch lever in mechanical communication with the rotator clevis. As described above in paragraph 2, Kochte includes a rotator clevis (V) and a latch lever (L; B in the previous Office Action) in mechanical communication with the rotator clevis, see attached Fig. 6.

10. In regards to claims 5 and 6, the Applicant contends that "it would not be obvious for one of ordinary skill in the art to combine Kochte and Jacobsen as the general teaching of Kochte



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relied upon by the Examiner does not suggest the specific combination. In response, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Kochte reference contemplates other means for the transfer of motion, see col. 4, lines 49-52. In regards to the Applicant's argument that the Jacobsen references teaches the use of a forked member that attaches to a lever, the Examiner notes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

11. The Examiner makes of record that the Applicant has not contested the rejections of claims 2-4 and 7-29 and has, consequently, conceded to these dependent claim rejections.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinesh N Melwani whose telephone number is 703-305-4546. The examiner can normally be reached on M-F, 8:30-6 except every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4115.

DNM

  
J. J. SWANN  
SUPERVISORY PATENT EXAMINER  
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